

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2019-0007
IN THE MATTER OF

WASHOE FUEL, INC., A NEVADA CORPORATION
DBA ALLIED WASHOE
PLUMAS COUNTY

This Administrative Civil Liability Order (Order) is issued to Washoe Fuel, Inc. a Nevada Corporation, doing business as "Allied Washoe" (Discharger) pursuant to Water Code sections 13350 and 13268, which authorizes the imposition of administrative civil liability. This Order is based on evidence and findings the Dischargers violated Cleanup and Abatement Order R5-2007-0705.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) hereby finds the following:

1. Allied Petroleum Company, Inc., a California corporation (Allied), took ownership of 291 Crescent Street, Quincy, California (Site) identified as Assessor's Parcel Number 115-180-002 on 12 March 1987 and conducted a bulk fueling business as "Allied Washoe." In 1995, Allied Petroleum Company, Inc. merged with Washoe Fuel, Inc., and the surviving company was Washoe Fuel, Inc. Washoe Fuel, Inc. owns the site and is the responsible party. Washoe Fuel, Inc. a Nevada Corporation currently leases the property for use by two local businesses operating on the subject parcel.
2. The Discharger operated a bulk petroleum fueling facility at the Site which included six aboveground storage tanks (ASTs) ranging in capacity from 15,000 to 25,000 gallons each to store gasoline, kerosene and diesel fuel. The fuel was distributed through an overhead loading rack and underground piping to an onsite dispenser island. A release of petroleum attributed to the ASTs and associated piping was originally discovered during removal of an underground heating oil tank in 1995.
3. In May 2001, the Norton Well and Spanish Creek Motel wells, located downgradient of the Site, were determined to have been impacted by methyl tertiary butyl ether (MTBE). Subsequent sampling of groundwater at the Site determined the presence of up to six feet of floating petroleum product, including MTBE, in the immediate vicinity of the ASTs. Central Valley Water Board staff estimated the volume of free product remaining in the ground at more than 2,000 gallons. Petroleum has also been detected in the sewer main on Crescent Street and in soil borings adjacent to the Site sewer lateral. The sewer main runs from the Site toward the Norton Well and Spanish Creek Motel well. Pumping tests performed by Levine-Fricke in 2003 indicate interconnectivity between the shallow aquifer where the product remains and the deep aquifer where the Norton Well and Spanish Creek Motel wells are screened. The Norton Well was taken out of service and the Spanish Creek Motel well is now only used for irrigation.
4. In 2007, in response to the release, the Central Valley Water Board issued three separate cleanup and abatement orders, which required the responsible parties for three parcels to characterize the release on the parcel, develop a cleanup plan for the parcel, and remediate the contamination for the parcel. Since that time, one of these parcels has been remediated and another is under verification monitoring post remedy implementation. The Allied Washoe parcel remains unaddressed.

5. The Discharger submitted a Corrective Action Plan (CAP) on 18 July 2008—291 days past the due date of 1 October 2007. In a 27 August 2008 letter, Central Valley Water Board staff indicated that the CAP was insufficient and requested an amended CAP that addressed staff comments. The letter established a 15 October 2008 due date for the amended CAP. Since 27 August 2008, the Discharger has not formally submitted an amended CAP.
6. The Discharger sampled semiannually between second quarter 2008 and third quarter 2014. The Discharger has not conducted groundwater sampling at the Site since 2014. The Discharger has never submitted the required quarterly monitoring reports, and has not submitted semiannual monitoring reports since 2014.
7. On 21 January 2014, Central Valley Water Board staff conducted a Site visit. Central Valley Water Board staff noted remaining free product, elevated constituents of concern, nearby sensitive receptors, and a secondary source still in place. A follow up email from Central Valley Water Board staff on 22 January 2014 summarized the status of the CAP submittal stating that the Discharger agreed to prepare a new CAP with a due date of 31 March 2014. This CAP was never formally submitted.
8. A draft CAP/soil remediation work plan was emailed to the Central Valley Water Board in 2015, but never formally submitted. On 18 May 2017, Tracy Johnston, an engineer from McGinley Associates, Inc. (McGinley), an environmental consulting firm, forwarded an unsigned draft of an amended CAP (dated 19 May 2014) and requested comments prior to final submittal. During a 24 August 2017 phone meeting between Central Valley Water Board staff, the Discharger and McGinley, the Discharger agreed to submit the amended CAP by 1 September 2017, but subsequently failed to do so.

PREVIOUS ENFORCEMENT ACTIONS

9. On 21 March 2007, the Central Valley Water Board issued Cleanup and Abatement Order No. R5-2007-0705 (CAO) to Washoe Fuel, Inc., requiring the Discharger, in part, to submit a Corrective Action Plan (CAP), a work plan for a screening level Health Risk Assessment and implement the proposed work.
10. On 12 July 2017, the Central Valley Water Board issued a Notice of Violation (NOV) for failure to submit the required CAP, failure to submit an Upgrade Work Plan for the ASTs, failure to implement the Upgrade Work Plan, failure to conduct quarterly monitoring and sampling of the onsite wells, failure to submit quarterly status reports, failure to reimburse the Central Valley Water Board for oversight costs, and failure to completely define the waste plume.
11. The Discharger is charged with violating the terms of the CAO, for which the Central Valley Water Board may impose liability under Water Code section 13350.
12. The CAO, in relevant part, required the Discharger to:
 - Action 3: By 1 October 2007, submit a CAP that provides a summary of remedial alternatives evaluated to address applicable cleanup levels for the affected or threatened human health and/or waters of the State.
 - Action 4: By 1 October 2007, submit an Upgrade Work Plan (Work Plan) to bring the facility into current compliance with Chapter 6.67 of the California Health and Safety Code.

- Action 5: By 30 November 2007, implement the Work Plan in accordance with the approved time schedule.
- Action 9: Monitor and sample quarterly all monitoring wells for total petroleum hydrocarbons as gasoline (TPHg), total petroleum hydrocarbons as diesel (TPHd), benzene, toluene, ethylbenzene, total xylenes (BTEX), seven fuel oxygenates (MTBE and others), dissolved oxygen, oxidation-reduction potential, pH, Iron II, nitrate, sulfate, and methane until otherwise directed in writing by the Executive Officer or his representative(s). Also sample quarterly domestic wells potentially threatened by the waste discharge for drinking water analytical methods of full list volatile organic compounds.
- Action 10: Submit Quarterly Status Reports by the first day of the second month after the calendar quarter in which the samples were collected.
13. Pursuant to Water Code section 13350, civil liability may be imposed for the following violations of CAO No. R5-2007-0705:
- a. Failure to submit an adequate CAP required by ordered paragraph 3 from the CAO.
14. Water Code section 13350 provides, in part:
- (a) Any person who (1) violates any ... cleanup and abatement order hereafter issued, reissued, or amended by a regional board ... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).
- *****
- (e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.
- (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.
- *****
- (B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the discharge occurs.
- *****
- (f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its

action based upon the specific factors required to be considered pursuant to Section 13327.”

15. Pursuant to Water Code section 13268, civil liability may be imposed for the following violations of CAO No. R5-2007-0705:
 - a. Failure to conduct quarterly monitoring and submit quarterly monitoring reports required by ordered paragraph 9 from the CAO.
16. Water Code section 13267 provides, in relevant part:
 - (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.
 - (b)(1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
17. Water Code section 13268 provides, in relevant part:
 - (a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, failing or refusing to furnish information as required by subdivision (a) or (b) of Section 13267.5, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).
 - (2) Any person who knowingly commits any violation described in paragraph (1) is subject to criminal penalties pursuant to subdivision (e).
 - (b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs...”

18. Water Code section 13327 states:

In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

VIOLATIONS

19. The Discharger violated multiple terms of CAO No. R5-2007-0705 for a significant period of time. The Central Valley Water Board Prosecution Team has identified the two most significant violations and the most reasonable time frame for which to assess administrative civil penalties based on the facts and background from the case. The Prosecution Team is alleging the Failure to Submit an Adequate Corrective Action Plan under Water Code section 13350, and the Failure to Conduct Quarterly Monitoring and Submit Quarterly Status Reports violation under Water Code section 13268.
20. Failure to Submit an Adequate Corrective Action Plan. Ordered paragraph 3 of the CAO requires: “**By 1 October 2007**, submit a Corrective Action Plan (CAP) that provides a summary of remedial alternatives evaluated to address applicable cleanup levels for the affected or threatened human health and/or waters of the State. The Corrective Action Plan shall propose at least two remedial technologies that have a substantial likelihood to achieve cleanup of all impacted soils and groundwater and shall include a schedule for achieving cleanup. The remedial technologies must be evaluated with respect to their ability to be implemented, cost, and effectiveness. The Corrective Action Plan shall include the rationale for selecting the preferred remedial alternative Corrective Action Plan as required in Title 23 California Code of Regulations, Division 3, Chapter 16, Article 11, Section 2725. Such rationale may include, but is not limited to, estimates of recoverable free phase product, sorbed and mobile pollutant mass, native biodegradation, and permeability trends. The Discharger shall attempt to clean up each constituent to background concentrations, or to the lowest level that is technically and economically achievable and which complies with all applicable Water Quality Objectives (WQOs) of the Basin Plan and promulgated water quality criteria.”
21. The Discharger submitted a CAP on 18 July 2008, 291 days past the due date of 1 October 2007. In a 27 August 2008 letter, Central Valley Water Board staff indicated that the CAP was insufficient and requested an amended CAP that addressed staff comments. The letter established a 15 October 2008 due date for the amended CAP. Since 27 August 2008, the Discharger has not formally submitted an amended CAP. A draft CAP/soil remediation work plan was emailed to the Central Valley Water Board in 2015, but never formally submitted. On 18 May 2017, Tracy Johnston, an engineer from McGinley Associates, Inc. (McGinley), an environmental consulting firm, forwarded an unsigned draft of an amended CAP (dated 19 May 2014) and requested comments prior to final submittal. During a 24 August 2017 phone meeting between Central Valley Water Board staff, the Discharger and McGinley, the Discharger agreed to submit the amended CAP by 1 September 2017, but subsequently failed to do so. To date, the Discharger has never formally submitted an adequate CAP to comply with the CAO. In addition, the draft CAPs were inadequate to fulfill the requirements of the CAO.

22. Failure to Conduct Quarterly Monitoring and Submit Quarterly Status Reports. Ordered paragraph 9 of the CAO requires: Monitor and sample **quarterly** all monitoring wells for TPHg, TPHd, Benzene, Toluene, Ethylbenzene, total Xylenes, seven fuel oxygenates (MTBE and others), dissolved oxygen, oxidation-reduction potential, pH, Iron II, nitrate, sulfate, and Methane until otherwise directed in writing by the Executive Officer or her representative(s). Also sample **quarterly** domestic wells potentially threatened by the waste discharge for drinking water analytical methods of full list volatile organic compounds. Method Detection Limits (MDLs) shall be derived by the laboratory for each analytical procedure, according to State of California laboratory accreditation procedures. The MDLs shall reflect the detection capabilities of the specific analytical procedure and equipment used by the lab, rather than simply being quoted from USEPA analytical method manuals. In relatively interference-free water, laboratory-derived MDLs are expected to closely agree with published USEPA MDLs.
23. Ordered paragraph 10 of the CAO requires: Submit Quarterly Status Reports by the 1st day of the second month after the calendar quarter in which samples were collected. The first quarter report is due **1 May**, the second quarter report is **1 August**, the third quarter report is due **1 November**, and the fourth quarter report is due **1 February**. Quarterly reports are to include information specified in *Appendix A- Reports, Tri-Regional Recommendations for Preliminary Investigation and Evaluation of Underground Storage Tank Sites*. Regional Water Board staff will review Quarterly Status Reports for Adequacy relative to further site investigation and cleanup. Based on such reviews, the Regional Water Board Executive Officer may, at his discretion, issue additional site-specific monitoring and reporting requirements, which would become part of this Order.
24. The days of violation for the two allegations are contained in the table below:

Violation	Initial Due Date	Violation Through	# of Days in Violation	Multiple Day Violation Reduction
Violation 1—Failure to Submit an Amended Corrective Action Plan	3/31/14	Current (2/7/19)	1775	93
Violation 2—Failure to Submit Quarterly Monitoring Reports				
4th Quarter 2014	2/1/15	4/30/15	89	36
1st Quarter 2015	5/1/15	7/31/15	92	37
2nd Quarter 2015	8/1/15	10/31/15	92	37
3rd Quarter 2015	11/1/15	1/31/16	92	37
4th Quarter 2015	2/1/16	4/30/16	90	37
1st Quarter 2016	5/1/16	7/31/16	92	37
2nd Quarter 2016	8/1/16	10/31/16	92	37

Violation	Initial Due Date	Violation Through	# of Days in Violation	Multiple Day Violation Reduction
3rd Quarter 2016	11/1/16	1/31/17	92	37
4th Quarter 2016	2/1/17	4/30/17	89	36
1st Quarter 2017	5/1/17	7/31/17	92	37
2nd Quarter 2017	8/1/17	10/31/17	92	37
3rd Quarter 2017	11/1/17	1/31/18	92	37
4th Quarter 2017	2/1/18	4/30/18	89	36
1st Quarter 2018	5/1/18	7/31/18	92	37
2nd Quarter 2018	8/1/18	10/31/18	92	37
3rd Quarter 2018	11/1/18	1/31/19	92	37
4th Quarter 2018	2/1/18	2/7/18	7	0 ¹
<u>Total Days for Violation 2</u>			1,468	589

¹ Partial month (2/1/18 through 2/7/18) not included in calculated Multiple Day Violation Reduction.

CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13350 FOR THE VIOLATION

25. The calculation of administrative liability, as set forth in Attachment B to Administrative Civil Liability Complaint R5-2018-0561, is incorporated herein.
 - a. As calculated in Attachment B to Administrative Civil Liability Complaint R5-2018-0561, the **maximum potential liability** for the Discharger's violations is **\$10,343,000**.
 - b. Allied Washoe has avoided the cost of conducting quarterly monitoring and submitting quarterly monitoring reports since before the start date of the alleged violations. All of the monitoring events and required reports are avoided costs because that data can never be recaptured. In addition to the avoided costs, Allied Washoe has yet to produce the workplan to conduct the cleanup, which is a delayed cost. The **total estimated economic benefit** is **\$99,545**.
 - c. As calculated in Attachment B to Administrative Civil Liability Complaint R5-2018-0561, the **final liability amount** is **\$660,521**.

26. The calculation of penalties is also attached as **Attachment A** to this Order.

OTHER MATTERS

27. The adoption of this Order is an enforcement action, which is exempt from the California Environmental Quality Act. (Cal. Code Regs., tit. 14,

IT IS HEREBY ORDERED THAT, pursuant to Water Code sections 13323, 13350 and 13268:

1. No Later than 30 days from the date on which this Order is issued, Washoe Fuel, Inc. shall pay **six hundred sixty thousand and five hundred twenty-one dollars (\$660,521.00)**. The liability imposed is based upon a review of the factors cited in Water Code section 13327 and the State Water resources Control Board's 2017 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. Payment Shall be made to the Waste Discharge Permit Fund (in accordance with Wat. Code, § 13350, subd. (k)) and shall be remitted to the Central valley Water Board at 11020 Sun Center Drive, Suite 200, Rancho Cordova, California, 95670-6114.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulation, title 23, section 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the 30th day falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet (at the address below) and will be provided upon request.

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

I, Patrick Pulupa, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 8 February 2019.

Original signed by Patrick Pulupa

PATRICK PULUPA, Executive Officer

Attachment A: Penalty Calculations

Attachment A – ACL Order R5-2009-0007
Specific Factors Considered for Administrative Civil Liability
Washoe Fuel, Inc., a Nevada Corporation, Plumas County

The *Water Quality Enforcement Policy* (Enforcement Policy)¹ promulgated by the State Water Resources Control Board (State Board) establishes a methodology for determining administrative civil liabilities by addressing the factors that are required to be considered under California Water Code section 13350, subdivision (e). Each factor of the nine-step approach is discussed below, as is the basis for assigning the corresponding score.

1. Step 1 - Potential for Harm for Discharge Violations

The failure to submit a complete and accurate Corrective Action Plan (CAP), conduct quarterly monitoring, and submit quarterly monitoring reports as required by the Cleanup and Abatement Order (CAO) are "non-discharge violations." Therefore, this step does not apply.

2. Step 2 - Assessments for Discharge Violations

The failure to submit a complete and accurate Corrective Action Plan (CAP), conduct quarterly monitoring, and submit quarterly monitoring reports as required by the Cleanup and Abatement Order (CAO) are "non-discharge violations". Therefore, this step does not apply.

3. Step 3 - Per Day Assessments for Non-Discharge Violations

Step three of the 2017 Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is major for Violation 1 and moderate for Violation 2 because the failure to submit a complete and adequate CAP, conduct quarterly monitoring, and submit quarterly monitoring reports as required by the CAO prevented an accurate assessment of impacts to soil and/or groundwater at the site and prevented remedial progress.

The Extent of Deviation from applicable requirements is major for Violations 1 and 2 because the intended effectiveness of the requirement has been partially compromised. Specifically, the intent of the requirement was that sufficient data and conclusions be developed for evaluation of remedial options for impacted soil and/or groundwater at the site. No evaluation of potential remedies was conducted at the site.

Using "TABLE 3 - Per Day Factor" and applying a Potential for Harm of major for Violation 1 and moderate for Violation 2 and an Extent of Deviation of major results in a factor of **0.85** for Violation 1 and **0.55** for Violation 2. As a result, the Initial Base Liability is:

¹ The 2017 Enforcement Policy can be found at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Violation 1: Initial Base Liability= $(0.85) \times (1,775 \text{ days of violation}) \times (\$5,000) =$
 $\$7,543,750$

Violation 2: Initial Base Liability= $(0.55) \times (1468 \text{ days of violation}) \times (\$1,000) =$
 $\$807,400$

TOTAL Initial Base Liability: $\$7,543,750 + \$807,400 = \$8,351,150$

4. Step 4 -Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to submit a complete and adequate CAP as required by the CAO lasted **1,775** days. The failure to conduct quarterly monitoring and submit quarterly monitoring reports as required by the CAO lasted **1,468** days.

The prosecution team recommends that the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 60, and every 30 days thereafter. This results in **93** days for Violation 1 and **589** days for Violation 2.

This results in a Revised Initial Base Liability as follows:

Violation 1: Revised Initial Base Liability= $(0.85) \times (93 \text{ days of violation}) \times (\$5,000) =$
 $\$395,250$

Violation 2: Revised Initial Base Liability= $(0.55) \times (589 \text{ days of violation}) \times (\$1,000) =$
 $\$323,950$

Revised Initial Base Liability: $\$395,250 + \$323,950 = \$719,200$

The Enforcement Policy also describes three factors related to the Discharger's conduct that should be considered for modification of the amount of initial liability: the Discharger's culpability, the Discharger's efforts to clean up or cooperate with regulatory authorities after the violation, and the Discharger's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of **1.3** has been selected because the Discharger was provided a detailed outline of the content to be included in the report and the required report was not submitted. In addition, the Central Valley Water Board notified Allied Washoe in a NOV that the required report was delinquent.

c. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. However, in this case, a multiplier of 1 is proposed because only one NOV was issued at the site.

d. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

The Discharger has not performed cleanup on this site and has shown a willful refusal to provide any of the required information thus a discounted penalty is not merited and a value of 1.2 was assigned.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$\text{(Revised Initial Liability)} \times \text{(Culpability Multiplier)} \times \text{(Cleanup and Cooperation Multiplier)} \times \text{(History of Violations)} = \text{(Total Base Liability Amount)}$$

$$\text{Violation 1: } (\$395,250) \times (1.3) (1.2) \times (1) = \$616,590$$

$$\text{Violation 2: } (\$323,950) \times (1.3) (1.2) \times (1) = \$505,362$$

$$\text{TOTAL BASE LIABILITY AMOUNT} = \mathbf{\$1,121,952}$$

6. Step 6 -Ability to Pay and Ability to Continue in Business

The Enforcement Policy provides that if the Central Valley Water Board has sufficient financial information necessary to assess the Discharger's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the Discharger's ability to continue in business, then the Total Base Liability Amount may be adjusted downward.

The Central Valley Water Board Prosecution Team does not have sufficient information to determine whether Allied Washoe has the ability to pay the proposed liability; therefore no adjustments were made to account for ability to pay in or continue in business. Allied Washoe sold most of its assets to Flyer's Energy in 2014, however it did not perform necessary site cleanup with any proceeds from that transaction. Mr. Cox created Washoe Fuels around that time and still operates. That said, Allied Washoe, with Mike Cox as officer, continues to exist as a landowner and landlord to two separate businesses at the site.

7. Step 7 - Economic Benefit

The Enforcement Policy directs the Central Valley Water Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount, by a minimum of ten percent.

Allied Washoe has avoided the cost of conducting quarterly monitoring and submitting quarterly monitoring reports, required pursuant to the CAO since 30 October 2007. This is an avoided cost, instead of a delayed cost, because this requirement cannot be complied with in the future. The estimated economic benefit for the failure to conduct quarterly monitoring and submit the reports is \$99,023.

The failure to submit the CAP is a delayed cost. The estimated economic benefit for failure to submit the CAP is \$522.

The total Economic Benefit is therefore **\$99,545**.

8. Step 8 - Other Factors as Justice May Require

The Enforcement Policy provides that if the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made. In addition, the costs of investigation should be added to the liability amount according to the Enforcement Policy. The Central Valley Water Board has applied a factor of **0.5** to align the final liability amount with previous administrative liability complaints.

9. Step 9 - Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Central Valley Water Board to consider the maximum or minimum liability amounts set forth in the applicable statutes.

The maximum potential liability for the alleged violations is **\$10,343,000**.

There is no statutory minimum liability for a violation of Water Code section 13267. However, the enforcement policy directs the Central Valley Water Board to recover, at a minimum, ten percent more than the economic benefit. In this case that would be **\$109,500**.

10. Step 10 - Final Liability Amount

The final liability amount consists of the added amounts for each violation, considering any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. Note that staff costs to prepare the ACL are not included in the final liability amount. The final liability amount calculation for the various violations was performed as follows.

$$\begin{aligned} & (\text{Total Base Liability Amount}) \times (\text{Factors as justice may require}) + \\ & (\text{Total Economic Benefit}) = (\text{Final Liability Amount}) \end{aligned}$$

$$(\$1,121,952) \times (0.5) + (\$99,545) =$$

$$\text{Final Liability Amount} = \mathbf{\$660,521}$$